**IN THE HIGH COURT OF JUDIATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.434 OF 1995**

Dnyaneshwar Namdeo Rakshe .. Petitioner.
Vs.
Siddeshwar Devasthan
(Sansthan) Pune & Others .. Respondents.

Mr.P.S.Dani for the petitioner.

**CORAM : D.B.BHOSALE, J.**

**DATED : 29TH AUGUST, 2005**

P.C.:

. Heard learned counsel for the petitioner.

2. This petition is directed against the judgment and order dated 7.10.1994 passed by the 5th Additional District Judge, Pune in Civil Miscellaneous Appeal No.152 of 1994 allowing the appeal filed by the respondent-defendant against the judgment and order dated 22.3.1994 passed by the Joint Civil Judge, Junior Division, Khed below application Exhibit-5 filed by the petitioner. By the order dated 22.3.1994 the trial Court had allowed the application Exhibit-5 and the respondent-defendant were restrained till the final decision of the suit from disturbing peaceful possession and wahiwat of the petitioner-plaintiffs

over suit land and from taking possession of suit land without following due process of law. The Appellate Court while allowing the appeal by the impugned judgment in paragraph 4 thereof has made the following observations:

> "4. The plaintiffs have claimed the injunction against the Public Trust. Admittedly the suit property is owned by the appellant no.1 which is a Public Trust. The relief of injunction is covered by Sec.50 sub-clause (p) read with sub clause (q). Hence only after obtaining permission from the Charity Commissioner, the suit for injunction can be filed against the Public Trust and that too only in the District Court. The Lower Court was not having jurisdiction to issue the injunction against the Public Trust. Therefore, the order of the Lower Court deserves to be set aside."

3. Mr.Dani, learned counsel for the petitioner submitted that while allowing the appeal, the appellate court also decided the issue of jurisdiction holding that the lower court was not having jurisdiction against the public Trust, which was not even raised by the respondent-Trust in the instant proceedings. This court on 10th July, 1995 had passed the following order:

> . "Interim relief in terms of prayer clause (c). It is, however, made clear that the suit shall proceed and both the sides shall be at liberty to raise such

> issues and the trial Court shall decide the suit, in accordance with law. The mere pendency of this Writ Petition shall not be considered enough justification for not proceeding with the suit".

4. Mr.Dani, learned counsel for the petitioner submitted that the suit is still pending. It is true that the point of jurisdiction was not raised nor was it addressed by the learned counsel for the petitioners before the appellate court. In view of this and considering that interim relief in terms of prayer clause (c) is running since 10th July, 1995 the ends of justice will be met if the Rule is made absolute in terms of the order passed by this court on 10th July, 1995 allowing the respondent - Trust to raise an issue of jurisdiction, if so advised, before the trial Court. Rule is, accordingly, made absolute in terms of the order dated 10th July, 1995. It is made clear that the trial Court shall decide the issue of jurisdiction, if raised, on merits in accordance with law. The writ petition is, accordingly, disposed of in aforesaid terms.

**(D.B.Bhosale, J.)**